

**MOBILE WORKFORCE INCOME TAX AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill addresses the tax liability and withholding requirements for a nonresident individual earning wages in the state.

**Highlighted Provisions:**

This bill:

- ▶ creates an exemption from income tax if a nonresident individual works in the state for 20 or fewer days during a taxable year and provides the circumstances for qualification;
- ▶ modifies the employer's withholding obligations, including penalties, for a nonresident individual whose wages are exempt from income tax; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:****AMENDS:**

**59-10-116**, as last amended by Laws of Utah 2008, Chapters 382 and 389

**59-10-117**, as last amended by Laws of Utah 2020, Chapter 239

**59-10-402**, as last amended by Laws of Utah 2020, Chapter 239

**59-10-405.5**, as last amended by Laws of Utah 2021, Chapter 16

**ENACTS:**

**59-10-117.5**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **59-10-116** is amended to read:

**59-10-116. Tax on nonresident individual -- Calculation -- Exemption.**

(1) Except as provided in Subsection (2), a tax is imposed on a nonresident individual in an amount equal to the product of the:

- (a) nonresident individual's state taxable income; and
- (b) percentage listed in Subsection 59-10-104(2).

(2) This section does not apply to a nonresident individual:

- (a) exempt from taxation under Section 59-10-104.1[-]; or
- (b) whose only state source income is wages that are excluded in accordance with Section 59-10-117.5.

Section 2. Section **59-10-117** is amended to read:

**59-10-117. State taxable income derived from Utah sources.**

(1) For purposes of Section 59-10-116, state taxable income derived from Utah sources includes state taxable income attributable to or resulting from:

- (a) the ownership in this state of any interest in real or tangible personal property, including real property or property rights from which gross income from mining as described by Section 613(c), Internal Revenue Code, is derived;
- (b) the carrying on of a business, trade, profession, or occupation in this state;
- (c) an addition to adjusted gross income required by Subsection 59-10-114(1)(c), (d), or (h) to the extent that the addition was previously subtracted from state taxable income;
- (d) a subtraction from adjusted gross income required by Subsection 59-10-114(2)(c) for a refund described in Subsection 59-10-114(2)(c) to the extent that the refund subtracted is related to a tax imposed by this state; or
- (e) an adjustment to adjusted gross income required by Section 59-10-115 to the extent the adjustment is related to an item described in Subsections (1)(a) through (d).

(2) For purposes of Subsection (1):

(a) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from Utah sources only to the extent that the income is from property employed in a trade, business, profession, or occupation carried on in this state;

(b) a deduction with respect to a capital loss, net long-term capital gain, or net operating loss shall be:

- (i) based solely on income, gain, loss, and deduction connected with Utah sources,

under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) otherwise determined in the same manner as the corresponding federal deductions;

(c) a salary, wage, commission, or compensation for personal services rendered:

(i) subject to Section 59-10-117.5, inside this state is considered to be income derived from Utah sources; and

(ii) outside this state may not be considered to be income derived from Utah sources;

(d) a share of income, gain, loss, deduction, or credit of a nonresident pass-through entity taxpayer, as defined in Section 59-10-1402, derived from or connected with Utah sources shall be determined in accordance with Section 59-10-118;

(e) a nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer's trade or business, may not be considered to carry on a trade, business, profession, or occupation in this state solely by reason of the purchase or sale of property for the nonresident's own account;

(f) if a trade, business, profession, or occupation is carried on partly within and partly without this state:

(i) an item of income, gain, loss, or a deduction derived from or connected with Utah sources shall be determined in accordance with Section 59-10-118; and

(ii) a salary, a wage, a commission, or compensation for personal services rendered is not considered to be an item of income from the carrying on of a business, trade, profession, or occupation;

(g) the share of a nonresident estate or trust or a nonresident beneficiary of any estate or trust in income, gain, loss, or deduction derived from or connected with Utah sources shall be determined under Section 59-10-207; and

(h) any dividend, interest, or distributive share of income, gain, or loss from a real estate investment trust, as defined in Section 59-7-101, distributed or allocated to a nonresident investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in the trust, shall:

(i) be income from intangible personal property under Subsection (2)(a); and

(ii) constitute income derived from Utah sources only to the extent the nonresident investor is employing its beneficial interest in the trust in a trade, business, profession, or

95 occupation carried on by the investor in this state.

96 Section 3. Section **59-10-117.5** is enacted to read:

97 **59-10-117.5. Nonresident individual wage exemption.**

98 (1) As used in this section:

99 (a) "Day" means any period of time during a calendar day that an individual is present  
100 in the state, unless the presence is solely for transportation through the state.

101 (b) "Wages" means income that:

102 (i) is received by an individual for employment duties performed inside this state; and

103 (ii) would be subject to withholding in accordance with Section 59-10-402 without  
104 regard to Subsection 59-10-402(5)(a).

105 (2) A nonresident individual's wages may not be considered income derived from Utah  
106 sources if:

107 (a) the nonresident individual has no other income from sources within this state for  
108 the taxable year in which the nonresident individual receives the wages;

109 (b) the nonresident individual is present in this state to perform employment duties for  
110 20 or fewer days during the tax year; and

111 (c) the nonresident individual's state of residence:

112 (i) provides a substantially similar exclusion; or

113 (ii) does not impose a state individual income tax.

114 (3) This section does not apply to wages received by:

115 (a) an individual who is a professional athlete or a member of a professional athletic  
116 team;

117 (b) an individual who is a professional entertainer and who performs services in the  
118 professional performing arts;

119 (c) an individual of prominence who performs services for wages on a per-event basis;

120 (d) an individual who performs construction services to improve real property,  
121 predominantly on a construction site, as a laborer;

122 (e) an individual who is a key employee, without regard to ownership or the existence  
123 of a benefit plan, for the year immediately preceding the current tax year pursuant to  
124 Subsection 416(i), Internal Revenue Code;

125 (f) an individual who is an employee of a non-corporate employer, and who would be a

key employee without regard to ownership or the existence of a benefit plan, for the year immediately preceding the current tax year pursuant to Subsection 416(i), Internal Revenue Code, if:

(i) the term "employee" were substituted for the term "officer"; and

(ii) the individual is one of the non-corporate employer's 50 highest paid employees without regard to whether the individual is an officer.

Section 4. Section **59-10-402** is amended to read:

**59-10-402. Requirement of withholding -- Exceptions.**

(1) As used in this section:

(a) "Day" means any period of time during a calendar day that an individual is present in the state, unless the presence is solely for transportation through the state.

(b) "Related entity" means:

(i) a stockholder who is an individual, or a member of the stockholder's family as described in Section 318, Internal Revenue Code, if the stockholder and the members of the stockholder's family own, in the aggregate, at least 50% of the value of the nonresident individual's outstanding stock;

(ii) a stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, or corporations own, in the aggregate, at least 50% of the value of the nonresident individual's outstanding stock; or

(iii) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least 50% of the value of the corporation's outstanding stock.

(c) "Related person" means a person that, with respect to the nonresident individual during all or any portion of the taxable year, is:

(i) a related entity;

(ii) a component member as defined in Subsection 1563(b), Internal Revenue Code;

(iii) a person to or from whom there is attribution of stock ownership in accordance with Subsection 1563(e), Internal Revenue Code; or

(iv) a person that, notwithstanding the form of organization, bears the same relationship to the nonresident individual as a person described in Subsection (1)(c)(i), (ii), or (iii).

(2) For purposes of determining whether the ownership requirements of a related entity are satisfied, a person shall:

(a) use the attribution rules of the Internal Revenue Code; and

(b) include direct, indirect, beneficial, or constructive ownership.

~~[(+)]~~ (3) Each employer making payment of wages shall deduct and withhold from wages an amount to be determined by a commission rule ~~[which]~~ that will, as closely as possible, pay the income tax imposed by this chapter.

~~[(2)]~~ (4) (a) ~~[(+)]~~ Any employer described in Subsection ~~[(+)]~~ (3) that is to do business within the state for a period not to exceed 60 days in the aggregate during any calendar year may be relieved from the requirement provided for under this part for such period by furnishing to the commission in advance a certificate so certifying.

~~[(+)]~~ (b) If an employer described in Subsection ~~[(2)]~~~~(a)]~~ (4)(a) thereafter does business within the state for a period in excess of 60 days, that employer shall be liable for all the tax that the employer would have been required to deduct and withhold.

~~[(+)]~~ (c) Upon a showing of good cause by the employer, the commission may extend for a period of not to exceed 30 days the time during which the employer is not required to deduct and withhold the tax.

~~[(b) The exemption described in Subsection (2)(a) is from the withholding requirement described in Subsection (1), not from an individual's obligation to pay income taxes as provided in Part 1, Determination and Reporting of Tax Liability and Information.]~~

(5) (a) (i) An employer described in Subsection (3) may not deduct or withhold any amount from wages paid to a nonresident individual if the nonresident individual's wages are excluded from state source income in accordance with Section 59-10-117.5 without regard to Subsection 59-10-117.5(2)(a).

(ii) For purposes of Subsection (5)(a)(i), an employer shall calculate the number of days described in Subsection 59-10-117.5(2)(b) by including the days the nonresident employee is present in the state to perform employment duties on behalf of the employer or any related person.

(b) If a nonresident individual is present in this state to perform employment duties for the employer, a related person, or a combination of the employer and a related person for more than 20 days during a calendar year, the employer shall be liable for all the tax that the employer would have been required to deduct and withhold.

(6) The exceptions described in Subsections (4)(a) and (5)(a) are from the withholding requirement described in Subsection (3), not from an individual's obligation to pay income taxes as provided in Part 1, Determination and Reporting of Tax Liability and Information.

~~[(3)]~~ (7) (a) The amount withheld under this section shall be allowed to the recipient of the income as a credit against the tax imposed by this chapter.

(b) Except as provided in Subsection ~~[(3)]~~ (7)(c), the amount withheld during any calendar year shall be allowed as a credit for the taxable year that begins in the calendar year in which the amount is withheld.

(c) If more than one taxable year begins in a calendar year, the withheld amount shall be allowed as a credit for the last taxable year that begins in the calendar year in which the amount is withheld.

Section 5. Section **59-10-405.5** is amended to read:

**59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty -- Application process and requirements -- Fee not required -- Bonds -- Exception.**

(1) As used in this section:

(a) ~~["applicant"]~~ "Applicant" means a person that:

(i) is required by this section to obtain a license; and

(ii) submits an application:

(A) to the commission; and

(B) for a license under this section[;].

(b) ~~["application"]~~ "Application" means an application for a license under this section[;].

(c) ~~["fiduciary of the applicant"]~~ "Fiduciary of the applicant" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for an applicant; and

(ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

(B) is a director of the applicant described in Subsection (1)(c)(i);

(C) is an employee of the applicant described in Subsection (1)(c)(i);

(D) is a partner of the applicant described in Subsection (1)(c)(i);

(E) is a trustee of the applicant described in Subsection (1)(c)(i); or

(F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[;].

(d) [~~"fiduciary of the licensee"~~] "Fiduciary of the licensee" means a person that:

(i) is required to collect, truthfully account for, and pay over an amount under this part for a licensee; and

(ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);

(B) is a director of the licensee described in Subsection (1)(d)(i);

(C) is an employee of the licensee described in Subsection (1)(d)(i);

(D) is a partner of the licensee described in Subsection (1)(d)(i);

(E) is a trustee of the licensee described in Subsection (1)(d)(i); or

(F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[;].

(e) [~~"license"~~] "License" means a license under this section[; and].

(f) [~~"licensee"~~] "Licensee" means a person that is licensed under this section by the commission.

(2) The following persons are guilty of a criminal violation as provided in Section 59-1-401:

(a) a person that:

(i) is required to withhold, report, or remit any amounts under this part; and

(ii) engages in business within the state before obtaining a license under this section; or

(b) a person that:

(i) pays wages under this part; and

(ii) engages in business within the state before obtaining a license under this section.

(3) The license described in Subsection (2):



250 (a) shall be granted and issued:  
251 (i) by the commission in accordance with this section;  
252 (ii) without a license fee; and  
253 (iii) if:  
254 (A) an applicant:  
255 (I) states the applicant's name and address in the application; and  
256 (II) provides other information in the application that the commission may require; and  
257 (B) the person meets the requirements of this section to be granted a license as  
258 determined by the commission;  
259 (b) may not be assigned to another person; and  
260 (c) is valid:  
261 (i) only for the person named on the license; and  
262 (ii) until:  
263 (A) the person described in Subsection (3)(c)(i):  
264 (I) ceases to do business; or  
265 (II) changes that person's business address; or  
266 (B) the commission revokes the license.  
267 (4) The commission shall review an application and determine whether:  
268 (a) the applicant meets the requirements of this section to be issued a license; and  
269 (b) a bond is required to be posted with the commission in accordance with  
270 Subsections (5) and (6) before the applicant may be issued a license.  
271 (5) (a) Except as provided in Subsection (5)(c), an applicant shall post a bond with the  
272 commission before the commission may issue the applicant a license if:  
273 (i) a license under this section was revoked for a delinquency under this part for:  
274 (A) the applicant;  
275 (B) a fiduciary of the applicant; or  
276 (C) a person for which the applicant or the fiduciary of the applicant is required to  
277 collect, truthfully account for, and pay over an amount under this part; or  
278 (ii) there is a delinquency in withholding, reporting, or remitting any amount under this  
279 part for:  
280 (A) an applicant;

(B) a fiduciary of the applicant; or

(C) a person for which the applicant or the fiduciary of the applicant is required to collect, truthfully account for, and pay over an amount under this part.

(b) If the commission determines it is necessary to ensure compliance with this part, the commission may require a licensee to:

(i) for a licensee that has not posted a bond under this section with the commission, post a bond with the commission in accordance with Subsection (6); or

(ii) for a licensee that has posted a bond under this section with the commission, increase the amount of the bond posted with the commission.

(c) The commission may waive the bond requirement described in Subsection (5)(a), if the applicant is in compliance with a payment agreement that:

(i) relates to the delinquency; and

(ii) is approved by the commission.

(6) (a) A bond required by Subsection (5) shall be:

(i) executed by:

(A) for an applicant, the applicant as principal, with a corporate surety; or

(B) for a licensee, the licensee as principal, with a corporate surety; and

(ii) payable to the commission conditioned upon the faithful performance of all of the requirements of this part including:

(A) the withholding or remitting of any amount under this part;

(B) the payment of any:

(I) penalty as provided in Section 59-1-401; or

(II) interest as provided in Section 59-1-402; or

(C) any other obligation of the ~~applicant or the licensee under this part.~~

~~[(H) applicant under this part; or]~~

~~[(H) licensee under this part.]~~

(b) Except as provided in Subsection (6)(d), the commission shall calculate the amount of a bond required by Subsection (5) on the basis of:

(i) commission estimates of:

(A) for an applicant, any amounts the applicant withholds, reports, or remits under this part; or

312 (B) for a licensee, any amounts the licensee withholds, reports, or remits under this  
313 part; and

314 (ii) any amount of a delinquency described in Subsection (6)(c).

315 (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):

316 (i) for an applicant, the amount of the delinquency is the sum of:

317 (A) the amount of any delinquency that served as a basis for revoking the license under  
318 this section of:

319 (I) the applicant;

320 (II) a fiduciary of the applicant; or

321 (III) a person for which the applicant or the fiduciary of the applicant is required to  
322 collect, truthfully account for, and pay over an amount under this part; or

323 (B) the amount that any of the following owe under this part:

324 (I) the applicant;

325 (II) a fiduciary of the applicant; and

326 (III) a person for which the applicant or the fiduciary of the applicant is required to  
327 collect, truthfully account for, and pay over an amount under this part; or

328 (ii) for a licensee, the amount of the delinquency is the sum of:

329 (A) the amount of any delinquency that served as a basis for revoking the license under  
330 this section of:

331 (I) the licensee;

332 (II) a fiduciary of the licensee; or

333 (III) a person for which the licensee or the fiduciary of the licensee is required to  
334 collect, truthfully account for, and pay over an amount under this part; or

335 (B) the amount that any of the following owe under this part:

336 (I) the licensee;

337 (II) a fiduciary of the licensee; and

338 (III) a person for which the licensee or the fiduciary of the licensee is required to  
339 collect, truthfully account for, and pay over an amount under this part.

340 (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may  
341 not:

342 (i) be less than \$25,000; or

343 (ii) exceed \$500,000.

344 (7) (a) The commission shall revoke a license under this section if:

345 (i) a licensee violates any provision of this part; and

346 (ii) before the commission revokes the license the commission provides the licensee:

347 (A) reasonable notice; and

348 (B) a hearing.

349 (b) If the commission revokes a licensee's license in accordance with Subsection (7)(a),

350 the commission may not issue another license to that licensee until that licensee complies with

351 the requirements of this part, including:

352 (i) paying any:

353 (A) amounts due under this part;

354 (B) penalty as provided in Section 59-1-401; or

355 (C) interest as provided in Section 59-1-402; and

356 (ii) posting a bond in accordance with Subsections (5) and (6).

357 (8) An employer that has erroneously applied the exception described in Subsection

358 59-10-402(5)(a) solely as a result of miscalculating the number of days a nonresident

359 individual is present in this state to perform employment duties may not be assessed a penalty

360 under this section if:

361 (a) the employer relied on a regularly maintained time and attendance system that:

362 (i) requires the employee to record, on a contemporaneous basis, the work location

363 each day the employee is present in a state other than:

364 (A) the employee's state of residence; or

365 (B) the place where services are considered performed for purposes of Section

366 35A-4-204; and

367 (ii) is used by the employer to allocate the employee's wages between all taxing

368 jurisdictions in which the employee performs employment duties;

369 (b) the employer does not maintain a time and attendance system described in

370 Subsection (8)(a) and relied on employee travel records that the employer requires the

371 employee to maintain and record on a regular and contemporaneous basis; or

372 (c) the employer does not maintain a time and attendance system described in

373 Subsection (8)(a) or require the maintenance of employee records described in Subsection

374 (8)(b) and relied on travel expense reimbursement records that the employer requires the  
375 employee to submit on a regular and contemporaneous basis.

376 Section 6. **Effective date.**

377 This bill takes effect for a taxable year beginning on or after January 1, 2023.